

HOUSE No. 2611

By Mrs. Pope of Wayland, petition of Richard T. Moore and others for legislation to further regulate mail order contact lens providers. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Richard T. Moore	Elizabeth A. Poirier
Patricia A. Haddad	Thomas P. Kennedy
Shirley Gomes	John A. Lepper

In the Year Two Thousand and Five.

AN ACT RELATIVE TO MAIL ORDER CONTACT LENSES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Chapter 111 of the General Laws is hereby amended by adding
- 2 at the end thereof the following:
- 3 SECTION 219. Section 1. Short title. This Act may be cited as
- 4 the "Mail Order Contact Lens Act".
- 5 Section 2. Definitions.
- 6 "Contact lens prescription" means a written order bearing the
- 7 original signature of a duly licensed optometrist or physician or an
- 8 oral or electronic order issued directly by an optometrist or physi-
- 9 cian that authorizes the dispensing of contact lenses to a patient.
- 10 "Department" means the Department of Public Health.
- 11 "Mail-order ophthalmic provider" means an entity that dis-
- 12 penses contact lenses through the United States Postal Service or
- 13 other common carrier to Massachusetts residents.
- 14 "Physician" means a person licensed to practice medicine under
- 15 the provisions of chapter 112 section 2.
- 16 Section 3. Dispensing contact lenses.
- 17 A mail-order ophthalmic provider may dispense contact lenses
- 18 in the Commonwealth or to a patient in the Commonwealth only

19 in accordance with a contact lens prescription. Such contact lens
20 prescription shall expire one year from the date of issuance.

21 Section 4. Rules.

22 The Department shall promulgate rules, as may be necessary,
23 for the administration of this Act, including but not limited to
24 rules requiring registration and certification of mail order oph-
25 thalmic providers under Section 5. Notice of proposed rulemaking
26 shall be transmitted to the Board of Registration in Optometry, the
27 Board of Registration in Medicine and the Department shall
28 review the response from the Boards and any recommendations
29 they make.

30 Section 5. Nonresident mail-order ophthalmic provider registra-
31 tion.

32 (a) The Department shall require and provide for an annual reg-
33 istration for all mail-order ophthalmic providers located outside of
34 this State, including those providing services via the Internet, that
35 dispense contact lenses to Massachusetts residents. A mail-order
36 ophthalmic provider's registration shall be granted by the Depart-
37 ment upon the disclosure and certification by a mail-order oph-
38 thalmic provider of all of the following:

39 (1) That it is licensed or registered to distribute contact lenses
40 in the state in which the dispensing facility is located and from
41 which the contact lenses are dispensed, if required.

42 (2) The location, names, and titles of all principal corporate
43 officers and the person who is responsible for overseeing the dis-
44 pensing of contact lenses to residents of this State.

45 (3) That it complies with all lawful directions and appropriate
46 requests for information from the appropriate agency of each state
47 in which it is licensed or registered.

48 (4) That it will respond directly to all communications from the
49 Department concerning emergency circumstances arising from the
50 dispensing of contact lenses to residents of this State.

51 (5) That it maintains its records of contact lenses dispensed to
52 residents of this State so that the records are readily retrievable.

53 (6) That it cooperates with the Department in providing infor-
54 mation to the appropriate agency of the state in which it is
55 licensed or registered concerning matters related to the dispensing
56 of contact lenses to residents of this State.

57 (7) That it conducts business in a manner that conforms with
58 the provisions of this Act.

59 (8) That it provides a toll-free telephone service for responding
60 to patient questions and complaints during its regular hours of
61 operation. The toll-free number

62 shall be included in literature provided with mailed contact
63 lenses. All questions relating to eye care for the lenses prescribed
64 shall be referred back to the contact lens prescriber.

65 (9) That it provides the following or a substantially equivalent
66 written notification to the patient whenever contact lenses are sup-
67 plied: WARNING: IF YOU ARE HAVING ANY OF THE
68 FOLLOWING SYMPTOMS REMOVE YOUR LENSES IMME-
69 DIATELY AND CONSULT YOUR EYE CARE PRACTITIONER
70 BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED
71 EYE DISCOMFORT, WATERING, VISION CHANGE, OR RED-
72 NESS.

73 (b) The Department shall provide a copy of this Act and its
74 rules with each application for registration.

75 Section 6. Fees.

76 The Department shall provide by rule for a schedule of fees for
77 the administration and enforcement of this Act. The fees shall be
78 nonrefundable.

79 Section 7. Violation; civil penalty.

80 (a) Any person who dispenses, offers to dispense, or attempts to
81 dispense contact lenses in violation of this Act or its rules shall, in
82 addition to any other penalty provided by law, pay a civil penalty
83 in an amount not to exceed \$5,000 for each offense as determined
84 by the Department. The civil penalty shall be assessed by the
85 Department after a hearing is held in accordance with the standard
86 rules and regulations of the Department.

87 (b) The Department may investigate all violations of this Act.

88 (c) The civil penalty shall be paid within 60 days after the
89 effective date of the order imposing the civil penalty. The order
90 constitutes a judgment and may be filed and execution had
91 thereon in the same manner as any judgment from any court of
92 record.